

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EON-NET, L.P.,

Plaintiff,

FLAGSTAR BANCORP

Defendant.

CASE NO. C05-2129 RSM

**DECLARATION OF JEAN-MARC
ZIMMERMAN IN SUPPORT OF
PLAINTIFF EON-NET, L.P.'S
MOTION FOR RECONSIDERATION
OF THE ORDER ON MOTION FOR
FEES AND COSTS**

**NOTE ON MOTION CALENDAR:
JANUARY 18, 2010**

I, Jean-Marc Zimmerman, declare as follows:

1. I am an attorney-at-law licensed in the State of New Jersey and am counsel for Econ-Net, L.P. in the above-identified action.

2. My statement during the deposition of Mr. Mitchell that I discarded "the documents" received in the ReadSoft case from Millennium's prior counsel was a reference to having discarded public documents and other non essential documents, e.g., invoices for travel to San Diego, copy service invoices, etc., pertaining to that litigation.

3. Examination of the deposition transcript immediately preceding the aforementioned quote indicates that Flagstar's counsel was questioning Mr. Medina about the existence of a draft specification that may have existed. True and correct copies of pages 60-65 from the transcript of the deposition of Mitchell Medina conducted on June 23, 2008 are attached hereto as Exhibit 1.

4. I never discarded a draft specification or any documents pertaining to the prosecution of the Millennium or Eon-Net patents, since those documents were in the possession of Millennium and Eon-Net's prosecution counsel, and not in my possession.

5. I asked Eon-Net's prosecution counsel about the existence of the draft specification and other non-public prosecution-related documents and was advised that they did not have any.

6. I never sought to disclaim responsibility for the error in sending out the incorrect interrogatory response regarding the requisite level of skill in the art in the BCF case. Rather, I was simply attempting to explain the mechanics of how it happened.

I declare under the laws of the United States that the foregoing is true and correct.

Jean-Marc Zimmerman
Jean-Marc Zimmerman

Dated: January 16, 2010
Westfield, New Jersey

EXHIBIT 1

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language in late fall 1990?

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A. We were trying to enable a paperless office and we didn't want to be tied to paper.

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So we anticipated that files that were created on a computer would ultimately come to be an object from which data was wanting to be extracted to feed the input process of an application.

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Q. Do you remember anything else about why you added that language at that time? You don't have to, I just want to make sure we have your full recollection of that time.

A. I think that some -- you know, I think it is an adequate statement.

Q. Do you remember discussing that language with Ms. Elias?

A. No, I -- I know for a fact that I did not.

Q. Do you know whether any drafts of Ms. Elias' specification that she completed in 1984 still exist?

A. I really don't know. The situation of Millenium and Eon-Net is as follows: I have moved around a lot. And in the process, all of

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my records of prior years are gone. I was
divorced in -- or separated in 1999. I lost
access to a lot of things at that time.

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When I moved to Kenya in the year
2000, more things were left behind. Now I
have been locked out of Kenya, so certain
things that might be in Kenya are not
accessible to me.

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And further, to be candid, as
Millenium and Eon-Net have evolved into
patent enforcement companies which are
involved in the business of litigation. We
have adopted a document retention policy
which is that we don't retain any documents.
So the only documents that exist are in the
custody of my attorney.

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Early on in the process, we selected
some documents, put them in a couple of
boxes. They were originally in the custody
of the predecessor counsel to Jean-Marc
Zimmerman and then were transferred to him.
There may be in that box of documents a copy
of the 1984 specification draft. I'm not
sure. Whatever is there has been produced to

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you. There is no more.

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Q. Who was Mr. Zimmerman's predecessor?

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A. Jeffrey Schwab of Abelman, Frayne & Schwab.

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Q. So in your position or Eon-Net's position --

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A. Not a thing --

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Q. Sorry, let me finish the question just for the record.

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A. OK.

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Q. Either in Eon-Net's possession or in your possession, there are no documents related to the actual process of inventing the invention in any of the patents at issue, is that correct?

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A. Nothing beyond what's contained in those boxes which should have been and which I trust have been produced to you. That selection of documents was made in 1996 to the best of my recollection when Millenium started its -- initiated its first lawsuit for the infringement, not of these patents, but of patent 1, the '855 patent.

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MR. ZIMMERMAN: Can I clarify something here.

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MS. BAILY: Can you just let him
finish his answer first.

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MR. ZIMMERMAN: Sure.

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A. Patent 2, the '508 patent, I think
those were the only two that were in existence
at that time. I seem to remember that patent 3
issued after the lawsuit settled or -- and that
the defendant subsequently took a supplementary
license under patent 3. Patent 3 having been --
being the '465 patent.

At the time of that litigation, the
selection of documents was made. We had more
records at that time, but that selection became
our selection of what we thought was relevant to
the document production requests that were given
to us at that time, and nothing else survives.

MS. BAILY: Can I just finish this
line of questions and then you can --

MR. ZIMMERMAN: Yeah, sure.

Q. When you say nothing else survives,
were the other documents destroyed at that time
or was it, as you said you have been moving
around and documents were lost?

A. I've been moving around. I never

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deliberately took something and threw it in the incinerator. It just -- but it -- I don't have it anymore and I don't -- it is not buried someplace either. It just doesn't exist.

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MR. ZIMMERMAN: I want to have a clarification. Jeffrey Schwab was prior litigation counsel, not prosecution counsel. Jeffrey Schwab's firm did not prosecute.

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THE WITNESS: That's correct.

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MR. ZIMMERMAN: The files, what was transferred to me were documents in connection with the litigation that I assumed and at the end of the litigation, we discarded the documents. The prosecution files were done by Foley & Lardner. To the best of my recollection, they have whatever prosecution files they have.

A. I know that Foley & Lardner's document retention process, policy, once a patent issues, they discard everything except, you know, what's in the file history.

MS. BAILY: Well, since you brought it up, did you contact the Foley & Lardner law firm --

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MR. ZIMMERMAN: I did. I spoke with -- I did it prior. But in response to your last thing to double-check, I also spoke with Blumenthal. David Blumenthal was the original attorney prosecuting the patents, but he is retired and it has subsequently been taken over by Glen Law. Glen Law confirmed for me that there is nothing responsive in the file histories or files that have any claim construction issues.

A. To amplify it further, Schwab quit in the middle of the case, not a first one, but a case that was pending Millenium case.

MR. ZIMMERMAN: In San Diego.

A. Zimmerman & Levi assumed the representation of Millenium in that case. Schwab transferred all the files he had over to Zimmerman & Levi.

MR. ZIMMERMAN: For that case.

A. And that was it.

Q. Now, after Mr. Lech brought up his initial idea to you and you guys had your initial discussion, you testified that you guys